

**SECTION 16.07 PREPARATION FOR A LAYOFF (Reduction in Force) - Non-Contract**  
**Last Update: 09/14**

**A. Definition of a Permanent Layoff**

A layoff occurs whenever the Employer permanently reduces the number of permanent employees in a class, or the number of scheduled hours worked by permanent employees in a class, except as provided in DAS-HRE subrule [11 IAC 60.3\(1\)](#).

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with the administrative rules or the applicable collective bargaining agreement.

**B. Planning a Permanent Layoff**

1. Determine a proposed layoff date. Department planning activities should begin at least 8 weeks prior to the proposed layoff date. More time may be required for layoffs of a complex nature. Your Personnel Officer should be consulted throughout the entire planning and layoff process.
2. Listed below are some basic steps to follow when planning a layoff (this information is discussed in more detail in the pages that follow):
  - a. Determine the affected job classes and number of positions to be eliminated. The extent of the layoff is based on various factors including, but not limited to: 1) the level of department appropriations, 2) workload levels, 3) reorganizing, reducing, or eliminating program areas, 4) legislative mandates related to department program activities, or 5) the number of temporary and probationary employees to be terminated.
  - b. Determine the layoff unit. Layoffs are by designated organizational unit (also called layoff unit, employing unit, or RIF unit) in accordance with DAS-HRE subrule [11 IAC 60.3\(2\)](#).

Layoff units for non-contract covered employees may be designated by the appointing authority. If the unit is smaller than a bureau, however, it is subject to the approval of the DAS-HRE Chief Operating Officer. Departments may designate a layoff unit for non-contract classes that is different than the layoff unit for contract-covered classes.

- c. Calculate the retention points of all the employees in the affected class in the layoff unit. (See [Section 16.12](#).) Rank permanent full-time and part-time employees in the affected job classes within the layoff unit in descending order of total retention points.
  - d. Establish the initial layoff line for each affected class within the layoff unit. Employees below the layoff line will be laid off unless they bump in lieu of layoff or find other employment prior to the layoff date.

Note: The layoff line is adjusted when a position above the initial layoff line is vacated allowing the line to be adjusted so that one less employee will be laid off.

The DAS director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions.

An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given within the last 12 months, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the DAS director.

- e. Develop *tentative* assignments for employees in positions above the layoff line. It is the appointing authority's right to determine the job duties and specific positions to which employees will be assigned. Management should attempt to assign job duties so that positions will not need to be reclassified.
- f. Identify *tentative* employment options for employees below the proposed layoff line.
  - 1) Determine the bumping rights of employees who are initially affected by the layoff. Also, identify other employees within the layoff unit who may be impacted by bumping.
  - 2) Notify your Personnel Assistant of the names of the employees likely to be laid off. Your Personnel Assistant will work with the DAS-HRE Employment Team to provide outplacement information to the affected employees.
  - 3) Identify those vacancies that have cleared transfer and recall provisions to which employees may voluntarily transfer, demote, or promote in accordance with DAS-HRE rules.

Note: Tentative assignments and employment options should not be discussed with employees prior to final approval of the layoff plan.

- g. Develop and submit the proposed layoff plan to DAS-HRE for initial review and approval. The plan will then be forwarded by DAS-HRE to DOM and then to the Governor's Office for final approval. Allow a minimum of seven to ten days for this approval process. The layoff plan must be approved prior to implementation. (A sample non-contract layoff plan can be found in the forms section of this chapter.)
- h. Terminate all non-permanent employees in the affected class(es) in the layoff unit prior to the layoff. DAS-HRE rules require that temporary (including provisional and trainee) and probationary employees in a class identified for layoff be terminated prior to the layoff of permanent full-time or permanent part-time employees. Contact your Personnel Officer before layoff when probationary, temporary, or contracted employees are involved.

An employee on military leave shall not be terminated as a probationary employee if the time the employee worked added to the military leave time equals or exceeds the required probationary period. In this case, the employee will receive continuous service credit as if still on the job. If the class the employee occupies is affected by layoff, the employee will be listed in retention point order with other employees in the class. If the employee's position is affected by a layoff, the employee will receive the same notice of layoff, and have the same layoff rights, as any other employee affected by the layoff.

If the combined period of time worked and military leave does not equal or exceed the required probationary period, the employee will be considered a probationary employee and must be terminated if the class the employee occupies is affected by layoff, prior to the layoff of any permanent employees.

- i. Employees on Workers' Compensation, FMLA, donated leave or other leave are treated in the same manner and have the same rights as employees who are on the job. Departments must notify all affected employees of the layoff, including their bumping and recall rights.

- j. Non-contract employees in positions exempt from the merit system are not covered by the DAS-HRE rules concerning layoff or recall provisions and are not to be included on the layoff plan.

### **C. Drafting the Layoff Plan**

1. All layoff plans must be approved by the DAS-HRE COO and the DAS Director, the DOM Director, and the Governor's Office prior to implementation. (A template is found in the forms section of this chapter.) If a layoff(s) results in the closing of a facility or work location or if a layoff will affect public access to services, a separate letter detailing the closing and/or the effect on access of the public to services must be included with the plan.
2. Layoff plans shall include the following: (See forms section of this chapter.)
  - a. The effective date and reason(s) for the layoff (budgetary, lack of work, etc.).
  - b. The designated layoff/organizational unit(s).
  - c. The number of employees to be laid off from each class within the layoff/organizational unit.
  - d. The cutoff date for calculation of retention points.
  - e. A sample of the "Retention Point Calculation Worksheet" for each class being evaluated. (See the forms section of this chapter.)
3. The layoff plan should address the positions and classes that will be initially impacted by the layoff. It is not necessary to detail the effects of bumping that may occur within the layoff unit.

### **D. Notification to Employees**

1. Departments must notify all initially affected employees in the layoff unit once the layoff plan has been approved by DAS-HRE and the Governor's Office. Employees must be notified individually in writing at least 20 workdays prior to the effective date of the layoff unless budget limitations require a lesser period of notice. Employees who are subsequently impacted by bumping must also receive written notification 20 workdays prior to the effective date of layoff.
2. Notification letters to employees shall be given directly to employees with an acknowledgement of receipt signed and dated by the employee. If the employee refuses to sign the acknowledgement, the supervisor will note that refusal on the letter, sign and date the letter, and place it in the employee's personnel file. Sample layoff letters can be found in the forms section of this chapter.

If an employee is not at work on the day that notice is to be given and has not designated someone else to receive notification, every reasonable effort must be made to locate the employee in person. If unable to contact the employee, in order to ensure notice, it may be necessary to send notice via certified mail, return receipt requested. This will ensure that the notice requirement is properly documented. Notice via certified mail may delay implementation of the reduction in force as it pertains to the unavailable employee(s), since the notice is only effective upon receipt by the employee, or return of the notice by the Postal Service. A copy of the documentation and layoff letter must be placed in the employee's file. After satisfying the notice requirement, the layoff shall proceed.

3. The notification letter shall contain the effective date and reason(s) for the layoff, the employee's bumping options, and recall rights.
4. Bumping options should be specific in terms of the position(s) and location(s). If the department is unable to specify the position(s) in the original notice, a subsequent notice must be sent to the

employee after this is determined. It is not necessary, however, to give another 20 days notice if merely advising employees of locations.

5. Employees have five calendar days from the receipt of each notice to advise the department in writing of their election to bump or be laid off.
6. If an employee receives a layoff notice and then decides to retire, the retirement will be approved if the date of retirement is no later than the date of layoff. Employees who retire in lieu of layoff are not entitled to recall.
7. Notice is not required in order to terminate probationary or temporary employees before affecting their class by layoff. Departments may give notice, but shall not let probationary employees in affected job classes acquire permanent status.

#### **E. Guidelines on Layoff**

1. Individual departments may not enter into side agreements with employees regarding either layoff or assignment.
2. An employee who accepts another position (other than a bump) prior to the layoff does not have recall rights.
3. Employees who retire on or before the layoff date are considered to have retired and not to have been laid off.

#### **F. Voluntary Layoffs**

Voluntary layoffs are permitted for non-contract covered employees. The volunteer must occupy a position in a class identified for layoff in the same layoff unit; the volunteer must substitute for the employee with the most retention points of those to be laid off; and the volunteer may not elect bumping. Since the volunteer is laid off, the volunteer has recall rights.

An employee below the layoff line who is retained due to the voluntary layoff of another employee may also be granted a voluntary layoff at the discretion of management. An employee volunteering for layoff must request layoff in writing and must receive a layoff notice.

#### **G. Reduction in Hours**

An employee whose scheduled hours are reduced may accept the reduction in hours, may be laid off, or may exercise applicable bumping rights. If an employee accepts the reduction in hours, the employee is eligible for recall to a full-time position in the class and layoff unit from which laid off. If an employee refuses a reduction in hours, the employee will be laid off and will have full recall rights.

Note: Reduction in hours of employees exempt from the premium overtime provisions of the federal Fair Labor Standards Act will affect the employees' exemption for overtime purposes for the duration of the period hours are reduced. As such, these employees would be eligible to receive pay at one and one-half the hourly salary for any hours exceeding forty in a workweek during a period of reduction in hours.